

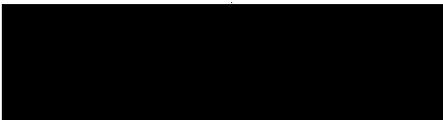


U.S. Department of Justice

Immigration and Naturalization Service

H3

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



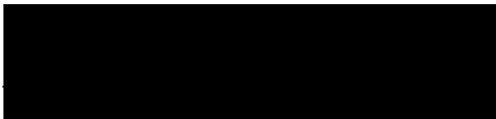
FILE: [REDACTED] Office: Nebraska Service Center

Date: OCT 3 2000

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of the Foreign Residence Requirement  
under § 212(e) of the Immigration and Nationality Act, 8 U.S.C.  
1182(e)

IN BEHALF OF APPLICANT:



Public Copy

INSTRUCTIONS:

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained, and the matter will be remanded to the director to request a § 212(e) waiver recommendation from the United States Information Agency (USIA).

The applicant is a native and citizen of Hungary and permanent resident of Syria who is subject to the two-year foreign residence requirement of § 212(e) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(e), because she participated in graduate medical education or training. The applicant was admitted to the United States as a nonimmigrant exchange visitor in July 1993. The applicant married a native of Lebanon and naturalized United States citizen on January 27, 1995. She is now seeking the above waiver after alleging that her departure from the United States would impose exceptional hardship on her U.S. citizen spouse and two children.

The director determined the record failed to establish her U.S. citizen spouse and children would suffer exceptional hardship and denied the application accordingly.

On appeal, counsel states that the qualifying relatives will suffer exceptional hardship if the applicant's husband is required to support two households and if they are separated from the applicant. Counsel states that the applicant's children will suffer education hardship if they accompany the applicant to Syria and they will face danger there as U.S. citizens. Counsel also submitted a psychiatric evaluation of the applicant's five year old child in which it is asserted that the child will have severe emotional trauma if separated from the mother. Counsel refers to the medical report regarding the applicant's spouse in which it is explained that her spouse has suffered from ulcerative colitis for which he is receiving treatment. The report indicates that the problem will be exacerbated by stress and would be an added hardship caused by the applicant's departure.

Section 212(e) EDUCATIONAL VISITOR STATUS; FOREIGN RESIDENCE REQUIREMENT WAIVER.-No person admitted under § 101(a)(15)(J) or acquiring such status after admission-

- (i) whose participation in the program for which he came to the United States was financed in whole or in part, directly or indirectly, by an agency of the Government of the United States or by the government of the country of his nationality or his residence,
- (ii) who at the time of admission or acquisition of status under § 101(a)(15)(J) was a national or resident of a country which the Director of the United States Information Agency pursuant to regulations prescribed by him, had designated as clearly requiring the services

of persons engaged in the field of specialized knowledge or skill in which the alien was engaged, or

- (iii) who came to the United States or acquired such status in order to receive graduate medical education or training,

shall be eligible to apply for an immigrant visa, or for permanent residence, or for a nonimmigrant visa under § 101(a)(15)(H) or § 101(a)(15)(L) until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least two years following departure from the United States: Provided, That upon the favorable recommendation of the Director, pursuant to the request of an interested United States Government agency (or, in the case of an alien described in clause (iii), pursuant to the request of a State Department of Public Health, or its equivalent), or of the Commissioner of Immigration and Naturalization after he has determined that departure from the United States would impose exceptional hardship upon the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien),...the Attorney General may waive the requirement of such two-year foreign residence abroad in the case of any alien whose admission to the United States is found by the Attorney General to be in the public interest....

Section 212(e) of the Act provides the following four grounds for waiving the two-year foreign residence requirement.

- (1) a request from an interested U.S. government agency;
- (2) the likelihood of persecution if the alien returns to his or her home country;
- (3) exceptional hardship to the alien's spouse or child (if such spouse or child is a citizen of the United States or a lawfully resident alien); or
- (4) a "no objection" letter from the alien's home country, except for aliens described in clause (iii) who came to the United States to receive graduate medical education or training.

Matter of Mansour, 11 I&N Dec. 306 (D.D. 1965), held that even though it is established that the requisite hardship would occur abroad, it must also be shown that the spouse would suffer as the result of having to remain in the United States. Temporary separation, even though abnormal, is a problem many families face in life and does not represent exceptional hardship as contemplated by § 212(e) of the Act. See Matter of Bridges, 11 I&N Dec. 506 (D.D. 1965).

Adjudication of a given application for a waiver of the foreign residence requirement is divided into two segments. Consideration must be given to the effects of the requirement if the qualifying spouse and/or child were to accompany the applicant abroad for the stipulated two-year term. Consideration must separately be given to the effects of the requirement should the party or parties choose to remain in the United States while the applicant is abroad.

An applicant must establish that exceptional hardship would be imposed on a citizen or lawful permanent resident spouse or child by the foreign residence requirement in both circumstances and not merely in one or the other. Hardship to the applicant is not a consideration in this matter.

Matter of Savetamal, 13 I&N Dec. 249 (Reg. Comm. 1969), held that a permanent resident spouse would be forced to give up an established career and start over again upon his return to the United States after a two-year absence, should he accompany his wife abroad; should he stay in the United States, he would be faced with the unusual hardship of maintaining two households and their citizen child, two years old, would be deprived of the affection, emotional security and direction of its father, which is most important during its formative years.

The record contains specific documentation which reflects that the applicant's husband and/or children would suffer financial, emotional and medical hardship which rises to the level of exceptional as envisioned by Congress whether they remain in the United States while the applicant returns temporarily to Syria, or whether they accompany the applicant to Syria.

In this proceeding, it is the applicant alone who bears the full burden of proving his or her eligibility. Matter of T--S--Y--, 7 I&N Dec. 582 (BIA 1957), and Matter of Y--, 7 I&N Dec. 697 (BIA 1958). In this case, the burden of proof has been met, and the appeal will be sustained.

It must be noted that a waiver under § 212(e) of the Act may not be approved without the favorable recommendation of the USIA. Accordingly, this matter will be remanded to the acting district director to file a Request For USIA Recommendation Section 212(e) Waiver (Form I-613) together with the waiver application in this case (Form I-612). If the USIA recommends that the application be approved, the application must be approved. On the other hand, if the USIA recommends that the application not be approved, then the application must be re-denied without appeal.

**ORDER:** The appeal is sustained. The director's decision is withdrawn. The record of proceeding is remanded to the director for action consistent with the foregoing.